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Office of the General Counsel

B-281691

December 28, 1998

The Honorable John McCain  
Chairman  
The Honorable Ernest F. Hollings  
Ranking Minority Member  
Committee on Commerce, Science, and Transportation  
United States Senate

The Honorable Thomas J. Bliley, Jr.  
Chairman  
The Honorable John D. Dingell  
Ranking Minority Member  
Committee on Commerce  
House of Representatives

Subject: Federal Communications Commission: MDS and ITFS Two-Way  
Transmissions

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Communications Commission (FCC), entitled "MDS and ITFS Two-Way Transmissions" (MM Docket No. 97-217; FCC 98-231). We received the rule on December 10, 1998. It was published in the Federal Register as a final rule on November 25, 1998. 63 Fed. Reg. 65087.

The rule permits multichannel Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) licensees to make more flexible use of their 6 MHz channels through the use of digital technology. MDS is primarily used for wireless cable service to subscribers, while ITFS is primarily used for one-way video service to students. Among other things, under the revised rule licensees will be able to utilize all or any part of their 6 MHz channels for two-way service; they will have the ability to use "response station hubs" as collection points for transmissions from a subscriber for which the operators will be issued blanket licenses instead of separate licenses for each hub; redefines "signal booster station" to allow such stations to originate transmissions as well as to relay them from other stations; and permits booster stations to cellularize wireless cable operations in

areas too large to be served by a single station. The rule also permits ITFS licensees to lease excess channel capacity to MDS operators.

Enclosed is our assessment of the FCC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the FCC complied with the applicable requirements.

If you have any questions about this report, please contact Alan Zuckerman, Assistant General Counsel, at (202) 512-4586. The official responsible for GAO evaluation work relating to the Federal Communications Commission is Judy England-Joseph, Director for Housing and Community Development Issues. Ms. England-Joseph can be reached at (202) 512-7631.

Robert P. Murphy  
General Counsel

Enclosure

cc: Ms. Kathy Fagan  
AMD-Performance Evaluation  
and Records Management  
Federal Communications Commission

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY  
THE FEDERAL COMMUNICATIONS COMMISSION  
ENTITLED  
"MDS AND ITFS TWO-WAY TRANSMISSIONS"  
(MM Docket No. 97-217; FCC 98-231)

(i) Cost-benefit analysis

The FCC's submission to us stated that it was not required to prepare and did not prepare a cost-benefit analysis of the rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Initial Regulatory Flexibility Analysis (IRFA) provides the information required by paragraphs 603(b)(1), (b)(2), (b)(3), and (b)(4). It describes the reasons for the proposed agency action; its objectives; the legal basis; and the reporting, recordkeeping, and other compliance requirements of the proposed rule. In addition, in accordance with 603(b)(5), the FCC notes that there are no federal rules that may duplicate, overlap, or conflict with the proposed rule.

The rule incorporates the Final Regulatory Flexibility Analysis (RFA) consistent with the requirements of 5 U.S.C. § 604. The analysis notes that the small entities affected include approximately 892 small MDS providers and 1,932 educational entities that hold ITFS licenses that can be categorized as small. The FCC satisfies the requirements of section 604(a). It describes the need for and objective of the final rule. It notes that no significant issues were raised by public comments in response to the IRFA. FCC notes the steps it has taken to minimize the economic impact on small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the FCC is not subject to title II of the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The FCC promulgated this rule under the notice and comment procedures of 5 U.S.C. § 553. A notice of proposed rulemaking was published on November 6, 1997, 62 Fed. Reg. 60025, and corrected on November 12, 1997, 62 Fed. Reg. 60750. The FCC received comments in response to the notice, and in its report indicates that it gave full consideration to the comments filed by the interested parties.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The rule imposes new or modified reporting and recordkeeping requirements. The requirements have not yet been approved by the Office of Management and Budget (OMB) and will not be effective until the FCC receives OMB approval.

Statutory authorization for the rule

The authority for this rule is stated to be 47 U.S.C. §§ 154(i), 154(j), 301, 303(f), (g), (h), (j), and (r), 308(b).

Executive Order No. 12866

As the rule is promulgated by an independent regulatory agency, it is not subject to the review requirements of E.O. 12866.